

1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA
3

4 W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
5 OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
6 ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
7 TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

8 Plaintiff,)
9

10 vs.)

No. 4:05-CV-00329-TCK-SAJ

11 TYSON FOODS, INC., et al,)
12 Defendants.)

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14
15 THE VIDEO DEPOSITION OF DAVID BERRY,
16 produced as a witness on behalf of the Defendants, in
17 the above styled and numbered cause, taken on the 29th
18 day of August, 2007, in the City of Tulsa, County of
19 Tulsa, State of Oklahoma, before me, Marlene Percefull,
20 Certified Shorthand Reporter, duly certified under and
21 by virtue of the laws of the State of Oklahoma.
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1 telephone also do the same? 9:05AM

2 MS. GRIFFIN: Jennifer Griffin on behalf
3 of Willow Brook Foods.

4 MR. SANDERS: Bob Sanders on behalf of
5 Cal-Maine. 9:05AM

6 THE VIDEOGRAPHER: Thank you. The witness
7 may be sworn.

8 DAVID BERRY,
9 having first been duly sworn to testify to the truth,
10 the whole truth and nothing but the truth, testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. GRAVES:

14 Q Could you state your full name?

15 A David Berry. 9:05AM

16 Q And, Mr. Berry, what is your address?

17 A P.O. Box 488, Locust Grove, Oklahoma, 74352.

18 Q And do you actually live in Locust Grove or is
19 that in the country somewhere?

20 A I live about three miles outside of Locust Grove 9:06AM
21 in the country.

22 Q Okay. Mr. Berry, have you ever given a deposition
23 before?

24 A Years ago.

25 Q Okay. I'll just go through a few basics of giving 9:06AM

1 and also your background on your father's farm, do you 11:31AM

2 agree there is a relationship between the use of

3 poultry litter and ownership of cattle?

4 A That there's -- I'm sorry, would you repeat that?

5 Q That there's a relationship between -- a close 11:31AM

6 relationship between the use of litter and the

7 ownership of cattle, raising cattle?

8 MS. WEAVER: Object to the form.

9 A The only relationship, I guess, that I would see

10 is that the cattleman uses the poultry litter for 11:31AM

11 fertilizer.

12 Q And to your knowledge, do a number of cattlemen

13 also get in the poultry business so that they'll have

14 poultry litter?

15 A I'd say not necessarily. Like my Laotian growers, 11:32AM

16 they're just, I think, growing chickens to make a

17 living.

18 Q That's one grower though, right, one farm?

19 A Yeah, I mean, but, I mean, I don't know who all is

20 doing it to grow chickens so that they've got poultry 11:32AM

21 litter for their cattle. I wouldn't know their

22 intentions.

23 Q In your experience, are any of the poultry growers

24 in your area, do they have any intent that you know of

25 to harm to try to harm the waters in Oklahoma? 11:32AM

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1 A Commercial litter applicators. Yeah, what that 2:52PM
2 would be is mainly how to fill out a report form.

3 Q Now, you've indicated that you have gone to some
4 training, O.S.U. training classes for commercial litter
5 applicators, is that accurate? 2:52PM

6 A Most of it is more for the poultry operator.

7 Q Okay. Are the commercial litter applicators
8 within your jurisdiction as a poultry inspector?

9 A They are in my territory.

10 Q What type of -- do you ever conduct any inspection 2:52PM
11 of the records of commercial litter applicators?

12 A No, ma'am.

13 Q Now, for commercial applicators, if they're going
14 to apply litter to someone who is not a poultry
15 grower's property, that individual doesn't have an 2:53PM
16 Animal Waste Management Plan, is that accurate?

17 A More than likely they don't. They're not required
18 by law to have one.

19 Q But they are required to have a soil test?

20 A A soil test and a licensed applicator to spread it 2:53PM
21 for them.

22 Q What type of -- if you know, what type of
23 documentation does an individual who's receiving
24 poultry litter who is not a poultry grower have to
25 provide to the Department of Agriculture as to their 2:53PM

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1 activity on their own land? 2:53PM

2 A They don't, the applicator turns in all the
3 reports. All the landowner is required to do is take
4 the soil tests and give a copy of that to the
5 applicator so the applicator has to send in a report 2:54PM
6 along with a copy of the soil and litter test of that
7 application.

8 Q And who informs the individual who is receiving
9 the poultry litter for their land that they're required
10 to have a soil test? 2:54PM

11 A I mean, that's -- hopefully it's just public
12 knowledge, I guess. I mean, I'm hoping that when you
13 talk to a poultry farm about getting litter from them
14 that they inform them that, yeah, we can sell you some
15 litter but you've got to have a licensed applicator, 2:54PM
16 you know, spread it. And other than that, I don't know
17 how they would find out.

18 Q Now, in some instances have you found that there
19 are poultry growers who sell their litter to a
20 commercial applicator but never know where their litter 2:54PM
21 is going to be applied?

22 A Right.

23 Q Okay.

24 A Right.

25 Q So they wouldn't be able to have that 2:54PM